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July 2015 Issue 3

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Legal Flip Flop On Unpaid Interns In Hollywood (and Pierce Law Group's Prior Prediction Of The Same) by David Albert Pierce, Esq.

Most of us remember spending time as a student working as an unpaid intern. Whether we received college credit, or simply used the experience to fill out our résumés, unpaid internships have allowed millions of young people to have the opportunity gain hands-on knowledge about an industry before making a decision about their future careers.

Unpaid internships are only beneficial for students, however, when they offer real educational opportunities. In recent years, legal battle have been waged by Plaintiffs' attorneys pursuing Hollywood employers arguing that unpaid intern positions were little more than unpaid, full-time jobs filled with menial tasks and little instruction.

The Interns v. Hollywood

Leslie Jones starts production on Ghostbusters reboot

Pierce Law Group client Leslie Jones is spending her summer vacation away from Saturday Night Live starring in Paul Feig's remake of "Ghostbusters." The all girls edition, stars Kristen Wiig, Melisa McCarthy, Leslie Jones and Kate McKinnon.

Here's one of the film's official photos from the set.



Blumhouse Productions Field Trip

David's UCLA Extension class "Organizing, Financing & Running An Entertainment Start-Up Production Company" took an informative field trip to Blumhouse Productions. Students had a great time learning from David's former student and Blumhouse Productions founder, Jason Blum (Hollywood reigning king of horror films) who was a star student in David's class more than ten years ago and

Several major entertainment companies including talent agencies, studios and production companies were hit with expensive lawsuits following the success of a 2011 class-action lawsuit against Fox Searchlight Pictures by interns who worked on the production of the movie, "Black Swan." In that case, a New York federal judge found that two unpaid interns should have been paid like employees because the internship was not educational, involved menial work and the studio benefitted from their work.

After the success of the "Black Swan" lawsuit, the litigation floodgates opened. Additional lawsuits were filed against the Hearst Corporation, Warner Music Group, MTV, The Charlie Rose Show (which settled for \$250,000), NBC Universal (which settled for \$6.4M), Condé Nast (which settled for \$5.8M), Viacom (which settled for \$7.2M), and ICM Partners.

Attorneys for The Wendy Williams Show were the latest to offer a settlement to interns who alleged that they should have been paid for their work. According to their complaint, the interns alleged that they were not offered any educational or vocational training, and that their internships consisted of washing dishes, getting coffee, and taking out the garbage. The interns believed that they were used instead of employees, and that the conditions of their internships violated the Fair Labor Standards Act, the New York Minimum Wage Law, and the New York Wage Theft Law.

In response to lawsuits and settlements like these, many in the entertainment industry have either canceled their unpaid internship programs, like publisher Condé Nast, or have begun paying their interns, like movie studio Universal Pictures.

However, The Wendy Williams Show and others may have settled too quickly. On July 2, 2015, the 2nd Circuit Court of Appeals reversed the Black Swan decision, finding in favor of Fox Searchlight Pictures.

In my article on unpaid internships in the Winter 2015 issue of MovieMaker Magazine

obviously became quite good at applying the concepts taught in that class-- might even say, **Its SCARY how good Blum learned those lessons!**



Legal Options After Your Photos Online Are Misused by Vera Golosker, Esq.

Sharing photographs online can be a precious way of connecting with family and friends, or an important tool for promoting your business. But whether you are a photographer, an independent film maker, or just a regular individual sharing information, pictures or video that you post on the internet can take on a life of their own.

("Ethical Exploitation"), I explained that the belief that all internships in Hollywood were unlawful was simply a fallacy and that with proper legal guidance and some forethought unpaid intern programs could survive a legal review.

[*\[click here for that article\]*](#)

Reversal of Fortunes

In the original Black Swan decision, the New York judge analyzed a six-factor test used by the Department of Labor (DOL) for determining when a person is an employee and when a person is an intern. In order to consider a job an internship, the DOL requires that the internship meet the following standards:

1. The internship experience must be similar to the training the intern would receive in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The internship does not replace the job done by a regular employee, and the intern is supervised by existing staff;
4. The employer does not receive an immediate advantage from the intern's activities-in fact, the internship may occasionally delay or impede the employer's actual work;
5. The intern is not guaranteed a job at the end of the internship; and
6. Both the intern and the employer understand that the intern is not entitled to wages for the time spent in the internship.

If an internship does not pass this test, the employer can be liable for lawsuits seeking back wages and other compensation for failing to comply with state and federal labor laws.

In the Court of Appeals decision, the appellate judges disagreed with the way the New York judge weighted each of the six factors. While the appellate court agreed that the six-factor test is important, the court ruled that the first and most crucial question that must be answered is whether the intern or the

In today's age of swift online communication, an interesting photo or a controversial post can be shared thousands of times within a few days. When pictures are posted, they also become ripe for theft and misuse, and can be copied and posted by strangers with ulterior motives.

When your pictures get stolen online, or are being used for an objectionable purpose, do you have any rights? What can you do to protect yourself after your photos are posted?

Right of Publicity

California has stringent privacy laws, in part because of the film industry and the numerous celebrities who are residents of the state. Both the California Civil Code and the state's common law system protect an individual's right of publicity.

The right of publicity allows a person to control his or her own likeness, image, voice, signature, and photograph. It is against California law to use a person's image or likeness for advertising or

employer is the primary beneficiary of the relationship.

In order to determine whether the intern or the employer benefits more, a court (or employer) can use the six-part test put forward by the DOL for guidance. However, the six-part test is not an exhaustive list, and other situational factors can and should be considered on a case-by-case basis.

How Does The Appellate Decision Affect Unpaid Internships?

The 2nd Circuit Court of Appeals decided that if an internship is sufficiently educational to be beneficial to the students, then an unpaid internship program can stand.

Employers should keep in mind that this decision is only binding within the 2nd circuit, which includes the states of New York, Connecticut, and Vermont. While the appellate court's decision is not binding in every federal judicial circuit, the case will none the less be influential in other circuits.

For now, both the DOL and California will continue to use the six-part test to determine whether or not an intern should be paid for his or her work. While the law may still change, employers who are looking to create or maintain an unpaid internship program should understand that hiring interns is not as simple as placing an ad looking for free labor. But, with proper planning and specifically tailored advice from a skilled labor law expert (such as the good folks at Pierce Law Group LLP), a compliant plan may be designed.

In order to avoid facing a lawsuit, companies need to carefully plan their internship programs to comply with state and federal law. If you are thinking of creating an unpaid internship program, or if you currently use unpaid interns, keep in mind that the more your internship is based around academic or educational experiences, the more protected your company will be from potential lawsuits. Your interns

commercial purposes without his or her consent. If an image is used this way, the person who used the image may be liable for damages including punitive damages if warranted.

While this does create a right to file a lawsuit for California citizens, it only applies to images of a person, not images of landscapes or objects (separate causes of action may be examined for those concerns). Additionally, if the person who used your image is not located in the United States, it may be tougher to track down the thief and force him or her to appear in court. However, a strongly-worded demand letter can often accomplish a take down of an infringing image, or a monetary settlement. If you are concerned that someone is using a photo of you or your child without your permission, always speak with an experienced attorney to learn more about your rights.

DCMA Take-Down Notices and Copyrights

For photographers or filmmakers, the first line of protection against theft on

should be shadowing your employees, not taking their place. If you are worried that your program may not pass the unpaid internship test, you always have the option of paying your interns the minimum wage.

To ensure your internship program is in compliance with state and federal laws, contact the attorneys at Pierce Law Group LLP today.

At Pierce Law Group LLP, our attorneys help entertainment industry professionals navigate complicated employment issues. To schedule your appointment, call (310) 274-9191, or visit us online at www.piercelawgroupllp.com.

LEARN MORE ABOUT THE PROPER USE OF UNPAID INTERNS:

The following article link was originally published in the Winter 2015 edition of MovieMaker Magazine (reprint courtesy of MovieMaker Magazine)

ETHICAL EXPLOITATION

The Indie Lawyer by David Albert Pierce

Unpaid Interns and Volunteers Are A Necessary Evil In Indie MovieMaking. Just go easy on the "evil." An Internship is a wonderful thing in theory. Students learn from industry leaders before entering a workforce which demands experience. And companies are enriched by. . . [to read the entire article click [here](#)]

California's New Sick Leave Went Into Effect July 1, 2015 by Azita Mirzaian, Esq.

Oftentimes, creative people in the entertainment industry are also small business owners. As business owners, it is important for them to be informed regarding the details of California's new law regarding paid sick leave and how to comply with the law's requirements. Likewise, it's important for employees to know their rights. Here's what you need to know:

the internet to register your intellectual property (your photos or videos) with the United States Copyright Office.

Under the U.S. Digital Millennium Copyright Act ("DMCA"), an Internet Service Provider (ISP) must remove a copyrighted photo from the website it is hosting if the ISP receives proper notice from the copyright owner of the violation. Note that it is up to the copyright owner to notify the ISP of the violation. If the ISP disregards a proper notice, and doesn't take down the material, that company may be liable to the copyright owner. Note that many websites (including YouTube and Pinterest) have clear, user-friendly DMCA takedown procedures.

Again, this is generally useful only if the ISP is located in the United States. If the website is hosted in a foreign country, it may be much more difficult to get the ISP to comply with U.S. law.

Demand Letters and Copyright Lawsuits

A copyright attorney, like those at Pierce Law Group

- The Healthy Workplaces, Healthy Families Act of 2014 (Labor Code §§ 245-249) mandates that employers provide all employees who work more than thirty days with Paid Sick Leave.
- Employees begin accruing Paid Sick Leave on July 1, 2015; employers must comply with notice and record-keeping requirements as of January 1, 2015.
- Paid Sick Leave applies to employees who work in California for 30 days or more in a year (including part-time, per diem, and temporary employees).
- Employees may start using the Paid Sick Leave beginning on the 90th day of employment.
- Employers may limit the amount of Paid Sick Leave an employee can use to 24 hours (3 days) per year.
- Employers may not retaliate against employees for using Paid Sick Leave.
- Upon termination of employment, there's no requirement to pay out unused Paid Sick Leave (unlike accrued but unused vacation time).
- Two methods employers can use when providing Paid Sick Leave:
 - Accrual Method
 - For every 30 hours employees work, they accrue 1 hour of Paid Sick Leave;
 - Unused Paid Sick Leave balance carries over year to year, but employers can put a cap of 48 hours (ie. 6 days) on the amount of Paid Sick Leave that carries over.
 - Up-Front Method

LLP, can assist you in taking legal action against the person or entity using your copyrighted photos online, and to register your copyrights.

In most copyright actions, you will need a copy of your copyright registration certificate. If your photo has not been registered with the United States Copyright office, you may have a more difficult time pursuing a legal remedy. One of the benefits of a successful copyright lawsuit is that the offending website or entity may be forced to pay for your legal fees and other damages.

If you are unsure about your rights under California law or under U.S. copyright law, you need an experienced lawyer on your side. At Pierce Law Group LLP, our attorneys can advise you of the best means to protect yourself, and will help you fight against the unauthorized use of your work. For more information, please call Pierce Law Group LLP at (310) 274-9191.

Upcoming Films

- Employers give every employee a bank of 24 hours (3 days) of Paid Sick Leave per year;
- Employee's bank of Paid Sick Leave hours is replenished back to 24 hours (3 days) on the anniversary of employment;
- Unused Paid Sick Leave does not carry over from year to year.

- Recordkeeping and Other Employer Requirements
 - Employers need to display the appropriate notification poster in workplace (the poster can be found on California's Department of Labor Standards Enforcement website);
 - Employers must give employee a written notice regarding how much Paid Sick Leave s/he has available (accrued but not yet used), either on paystubs or on a separate writing provided to employee on payday;
 - Employers must keep records for three years showing hours earned and used.

For more information regarding the new law and how its requirements can be integrated into workplace policies, please contact Pierce Law Group LLP at (310) 274-9191.

The Decline of Western Civilization Parts 1, 2, and 3 Deluxe Box Set Out Now!

The long awaited released of Penelope Spheeris' rock documentary trilogy, *The Decline of Western Civilization* Parts 1, 2, and 3 is now out for the first time on DVD in a collector's set. The series followed the punk rock scene in the early 80s, the segway to metal hairbands in the early 90s and gutter punks



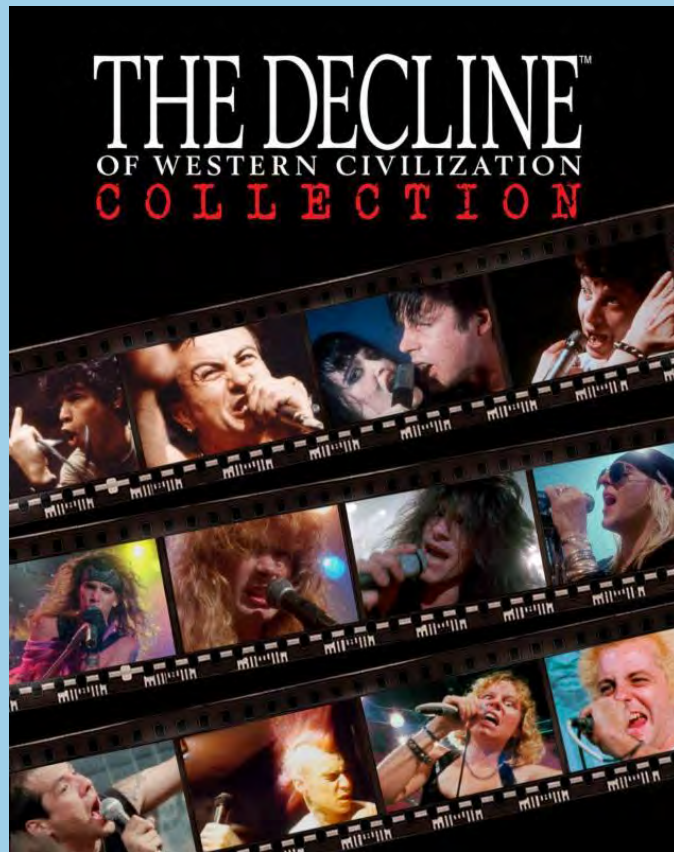
Pierce Law Group is proud to announce that Fortress Features Bloodsucking Bastards will open in select theaters and on demand September 4th, 2015. Pierce Law Group negotiated the deal on behalf of Producers.

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prior to the turn of the millennium. The trilogy is a cult classic and is considered by scholars as a triumph in documentary filmmaking. Penelope is also known for her more mainstream commercial comedies such as "Waynes World" and "The Beverly Hillbillies" among many others.

You can purchase the full box DVD set released by Shout! Factory [here](#).





**Leukemia &
Lymphoma Society
Man & Woman of the
Year
Grand Finale Gala**



DAP with Penelope Spheeris, her daughter and business partner, Anna Fox and the Shout! team at the deal signing.

American Ninja Warrior Season 7 wraps!

Congrats to the continued success of our client, Alpine Training Services, and the entire ATS Team for completing the filming of American Ninja Warrior, Season 7. The season concluded this past weekend in Las Vegas and will air later this summer on NBC.



On June 13th, Pierce Law Group LLP sponsored a table for 10 at the annual Leukemia Lymphoma Society's Man Of the Year Grand Finale Gala which was held this year at Universal Studios' Globe Theater. The charity event successfully raised One Million Thirty-Nine Thousand Dollars for blood cancer research. David Albert Pierce is a Trustee on the Executive Board for The Greater Los Angeles Chapter of LLS and arranged for the event to our client, comedian Stephen Kramer Glickman ("Big Time Rush"). For more information or to make a donation to The Leukemia Lymphoma Society, please visit <https://www.lls.org/>.



Speaking Engagements

On July 15th, Azita Mirzaian and Vera Golosker will be speaking on a panel for California Lawyers for the Arts entitled "The Basics of Copyright Law for Artists." For more information on the event please see the flyer below or [visit](#).

CALIFORNIA LAWYERS FOR THE ARTS PRESENTS

INTRO TO COPYRIGHT LAW

Sherman Oaks Galleria Community Room
15301 Ventura Blvd.
Sherman Oaks, CA 91403

PROGRAM

You have written, developed, drawn, painted, or produced a creative work - now, who owns the work and controls the right to exploit it? Separate fact from fiction in this workshop that covers the basics of copyright law and protection of your art. Join CLA and Pierce Law Group LLP attorneys Azita Mirzaian and Vera Golosker for an overview of United States copyright law as it relates to the arts and entertainment industries. Topics that will be covered include: what is and is not protected by copyright law; rights conferred by the Copyright Act; the benefits of registering a copyright; works-made-for-hire; fair use (including a discussion of parody and satire); the difficulties with so-called "idea theft" claims; and the evolution and future of copyright law.

**WEDNESDAY
JULY 15, 2015
7-8:30 pm**

PRESENTERS

AZITA MIRZAIAN, ESQ.
Azita's practice includes entertainment litigation, in the areas of copyright, trademark, right of publicity, contract disputes, defamation, and actor and employment law issues in the film and television industry. She also works in the areas of film clearance matters and child actor contract negotiations. Azita is the Vice Chair of the Beverly Hills Bar Association's Intellectual Property Section, is on the Executive Committee of the Beverly Hills Bar Association's Entertainment Section, and is a founding member of California Society of Entertainment Lawyers. She is the author of "The Utility of Practical Copyright Protection for Movie Characters Sold in the Era of the Superhero Movie Franchise," published in the Summer 2012 issue of The Journal of the Copyright Society of the USA.

VERA GOLOSKER, ESQ.
Vera practices primarily in litigation involving trademark and copyright infringement, unfair and deceptive trade practices, and fraud in the entertainment industry. She also works on contract litigation, as well as corporate matters and transactions for independent filmmakers. Vera is a member of the Beverly Hills Bar Association's Entertainment Law and Intellectual Property, Internet, and New Media Sections, and is on the Continuing Legal Education Committee of California Society of Entertainment Lawyers. She is also a member of Bar Tzohar's New Dealmakers Council. Vera is the author of "The Transformative Tribute - How Musician's Music Constitutes Fair Use of Copyrights," published in the Hastings Entertainment and Entertainment Law Journal's Spring 2012 issue.

CLA Member: \$10; \$15 at door
CLA Student/Senior Member: \$5; \$10 at door
General Public: \$20; \$25 at door

PARKING
Validation for free self-parking in the Galleria complex will be available for a limited number of attendees on a first come, first served basis.

REGISTER ONLINE:
www.calawyersforthearts.org/calendar

Questions? Call CLA at (310) 998-5590

These programs are made possible, in part, by the Los Angeles County Board of Supervisors through the Los Angeles County Arts Commission and The City of Los Angeles, Department of Cultural Affairs. Additional support provided by the California Arts Council.

The Top Dogs At Our Firm



Pierce Law Group LLP celebrates the Firm's anniversary at Pink's Hot Dog Stand on June 14th.

Featured in photo: Front Row from left: USC Law Summer Associate Stacey Villagomez, Litigation Attorney Vera Glosker (little hotdog with pigtails), Managing Partner David Albert Pierce, Intellectual Property

Attorney Brian Hewitt (little hotdog with cap), Corporate Attorney Danielle Ayalon, DAP's Key Assistant Eric Schuller. Back Row from left: Internet/New Media Attorney Jason Brooks, Accounts Receivable Clerk Ben Kuerschner (Hotdog with perm & bow), Client Director Lindsey Henderson (tall thin hotdog). Missing from photo & fun: Attorneys: Anthony J. Hanna, Trea Tran-Lachowicz, Briana C. Hill, Azita Mirzaian, and Firm Controller Tina Petroski.

About Pierce Law Group LLP

Pierce Law Group LLP is a full service entertainment law firm with nine attorneys. It practices in the areas of entertainment law, intellectual property (copyright, trademarks, right of publicity), film finance, securities law, production counsel, and labor & employment issues affecting the entertainment industry with an emphasis on film, television and new media.

The firm also represents various artists including producers, actors, writers, directors, numerous accomplished comedians, and other creative entrepreneurs.

Our client list includes both Academy Award and Emmy Award winners. The Firm's academic and analytic approach to contract negotiations and litigation seek to obtain creative solutions for achieving our client's desires.

Practice Areas

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Disclaimer

The information you obtain in this newsletter is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters, and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.

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